IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4545 of 1991

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHAGANBHARTI P GOSWAMY - Petitioner(s)

Versus

STATE OF GUJARAT & 2 - Respondent(s)

Appearance :

MR NITIN M AMIN for Petitioner No(s).: 1.

MR AMIT M PANCHAL for Petitioner No(s).: 1.

MR. M.R.MEGDE, LEARNED AGP for Respondent No(s).: 1.

RULE SERVED for Respondent No(s).: 2.

MR PRANAV G DESAI for Respondent No(s).: 3.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 29/08/2005

ORAL JUDGMENT

1.In this petition under Article 226 of the Constitution of India, the petitioner has prayed for an appropriate

writ, direction or order restraining the respondents from acquiring and demolishing the structures in the land of the petitioner including the temple, the water tank, the shrines, the toilet and bath-room, the benches, etc., which are situated in the land of the petitioner. A further prayer is to direct the respondents to acquire and utilize the open land from the S.V.R. Campus situated opposite the land of the petitioner.

2.It is the case on behalf of the petitioner that the petitioner is the owner and occupier of the temple and the residential bungalow, which are in final plot No.5 (Survey No.17/P) situated on the Surat-Dumas Road. It is also the case on behalf of the petitioner that there is a temple and that temple is existing on the plot belonging to the petitioner since last 100 years and has got shrines of Shitla Mata, Hanumanji, Jalaram Bapu and Khodiyar Mata. It is the case of the petitioner that respondent No.2 Town Planning Officer sent a notice dated 19.7.1989 informing the petitioner that he has some interest in the plot of the land and that plot of the land of the petitioner falls within Town Planning Scheme, Surat No.5 (Umra North) and the petitioner was required to produce certain informations

and details on 31.7.1989. It is also the case of the petitioner that the petitioner through his advocate replied to the same on 25.7.1989. It is the case of the petitioner that the petitioner pointed out the aforesaid things and the existing construction and also submitted that it was not for the respondent to include the plot of the petitioner in the Town Planning Scheme. It is also the case of the petitioner that thereafter, nothing was heard further from the respondents however, on or before 25.4.1991 some officers of the respondent authorities came to the residence of the petitioner and informed the petitioner that petitioner's land would be included in the said Town Planning Scheme and that the temple and the water tank and the shrines was demolished and removed and the petitioner immediately wrote a letter on 29.4.1991 submitting that he has earlier expressed his views and stated his objections to the proposed action of demolision of the proposed temple and water tank and the shrines. It is also submitted on behalf of the petitioner that there is only a requirement of 15 ft. of land and the same can be acquired without disturbing the land of the petitioner and without demolishing the existing construction as there is adequate open land to the extent of upto 250 ft. without construction in the

S.V.R. Campus which is situated exactly opposite the land belonging to the petitioner and it is submitted that as according to the petitioner the respondent authorities were likely to demolish the existing construction and the structures situated on the said land without following due process of law as required under the provision of Gujarat Town Planning and Urban development Act and the Gujarat Town Planning and Urban Development Rules therein, the present Special Civil Application with the aforesaid reliefs.

3. Shri Nitin Amin, learned advocate appearing on behalf of the petitioner has vehemently submitted that there is a existing superstructure and construction over the land in question, which was not required to be acquired by the Town Planning Authorities for widening of the road and/or take the said land in the Town Planning Scheme otherwise it may affect the religious feelings and sentiments of the public at large, more particularly, of the persons who are residing in the said locality. It is also further submitted that the respondents were likely to take over the possession and/or demolish the construction without following due process as required under the provision of Gujarat Town Planning Act and Regulations therein. It is also

further submitted that in fact, there was a need of only 15 ft. road, which can be taken over and/or acquired from the other side of the plot in question from the campus of S.V.R. Complex where there is an open piece of land and thereby the existing construction in the plot in question can be saved therefore, it is requested to allow the present Special Civil Application.

4. Shri M.R.Megde, learned AGP appears on behalf of respondent No.1 and Shri Prashant G. Desai, learned advocate appears on behalf of respondent Nos.2 and 3. An affidavit-in- reply is also filed on behalf of respondent Nos.2 and 3 wherein, it is stated that the petitioner's land is in final plot No.5 (Survey No.17/P Umra North) situated on Surat-Dumar Road and according to the provisions of the said draft scheme and under the approved development plan of Surat Urban Development Authority (SUDA), the said final plot is covered by 200 ft. on the Surat Dumas Road and while preparing the draft scheme, all the legal and necessary procedures were followed and thereafter, the approval of the Government was taken. It is also further submitted that after following necessary procedure, necessary demarcation has been made on the site under

the Town Planning Scheme by the Town Planning Officer and the award of the scheme under Section 52 of the Act has also been declared therefore, it is contened that there is no reason for restraining the respondents from acquiring the land under the Town Planning Scheme.

5. It is also further submitted that no acquisition of the land of the Surat Municipal Corporation is in process in Town Planning Scheme No.5 (Umra North) under the provisions of the Gujarat Town Planning and Urban Development Act; 1976 preliminary schemes are being prepared by the Town Planning Officer and it is only after the approval of the Government that the proceedings for any changes in the acquisition of land are to be considered under the provisions of the Act therefore, it is requested to dismiss the present Special Civil Application.

6. It is required to be noted that the petition is of 1991 and that as per the affidavit-in-reply filed on behalf of the respondent Nos.2 and 3 at the relevant time it was at a preliminary scheme and before implementing the Town Planning Scheme, the procedure as required under the provision of the Gujarat Town Planning are required to be followed upto sanctioning of the final scheme. As

held by this Court in case of ***Manjulaben Bhailalbhai Patel & Ors. V/s. Vadodara Uraban Development Authority & Ors.,*** reported in ***1996(2) G.L.R. P.588***, the petitions at the stage of draft planning scheme was held to be premature as the State Government was yet to consider the objections. Under the provisions of the Town Planning Scheme at every stage upto sanctioning of the final Town Planning Scheme, the objections and suggestions are required to be considered by the appropriate authorities. Under the circumstances, the present Special Civil Application was not maintainable at all and it was premature. Today when the matter is called out, nobody has pointed out what has happened to the Town Planning Scheme and whether the same has become final or not. If Town Planning Scheme has become final and is not challenged, then in that case, the final Town Planning Scheme is required to be implemented. It is not the case of the petitioner that he is challenging the Town Planning Scheme. Such a vague prayer cannot be granted. The contention on behalf of the petitioner that only 15 ft. road was required and the same can be acquired under the Town Planning Scheme from the other side of the plot from the campus of S.V.R. Complex, where there is an open piece of land. All these things cannot be considered by

this Court in a petition under Article 226 of the Constitution of India and it is ultimately for the appropriate authority to consider the same under the provisions of the Town Planning Act. At the most, the petitioner's objections and suggestions were required to be considered firstly by the Town Planning Office at the time of preparing preliminary Town Planning Scheme and thereafter, by the State Government at the time of sanctioning the preliminary scheme and thereafter, preparing final Town Planning Scheme and at the time of sanctioning the final Town Planning Scheme by the State Government. This Court is not required to consider the prayer of the petitioner to direct and/or advise the respondent as to which land is appropriate and which land is required to be acquired by them. All these things are required to be considered by the appropriate authority while taking appropriate decision and sanctioning the Town Planning Scheme under the provisions of the Act.

7. Under the circumstances, there is no substance in the present Special Civil Application and the same is required to be dismissed and is, accordingly, dismissed. Rule discharged. Ad-interim relief granted earlier stands vacated forthwith, however, there will

be no order as to costs.

(M.R.SHAH, J.)

kdc.